

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ROD EDWARDS,

Plaintiff,

v.

**MULTNOMAH COUNTY SHERIFF
DANIEL STATON; DIRECTOR OF
HUMAN RESOURCES FOR THE
MULTNOMAH COUNTY SHERIFF'S
OFFICE JENNIFER OTT; MULTNOMAH
COUNTY SHERIFF'S OFFICE UNDER
SHERIFF TIM MOORE; MULTNOMAH
COUNTY SHERIFF'S OFFICE CHIEF
DEPUTY JASON GATES; by and through
the MULTNOMAH COUNTY SHERIFF'S
OFFICE, a political subdivision of
MULTNOMAH COUNTY, OREGON,**

Defendants.

Case No. 3:14-cv-00531-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on May 19, 2016. ECF 74. Judge Acosta recommended that Defendants' motion for summary judgment (ECF 49) be granted and this case be dismissed. Judge Acosta further recommended that Plaintiff's motion to strike Defendants' reply (ECF 69) be denied as moot.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

Plaintiff filed an objection to the Findings and Recommendation. ECF 76. Defendants did not respond. Plaintiff objects to those portions of Judge Acosta’s Recommendation finding that: (1) certain deposition excerpts are inadmissible for lack of authentication; (2) no genuine issue of material fact exists regarding whether Defendants’ reasons for denying Plaintiff a statutory veterans’ preference are pretextual; and (3) Plaintiff’s motion to strike Defendants’ reply should be denied. Plaintiff’s objections re-state arguments that Plaintiff made before Judge Acosta. *Compare* ECF 66 (Plaintiff’s Response to Defendants’ Motion for Summary Judgment) *and*

ECF 69 (Plaintiff's Motion to Strike Defendants' Reply) *with* ECF 76 (Plaintiff's Objections).

The Court has reviewed *de novo* those portions of Judge Acosta's Findings and Recommendation to which Plaintiff has objected, as well as Plaintiff's objections and underlying briefing. The Court agrees with Judge Acosta's reasoning and ADOPTS those portions of the Findings and Recommendation to which Plaintiff has objected.¹

Defendants filed an objection to the Findings and Recommendation. ECF 79. Plaintiff did not respond. Defendants object to those portions of Judge Acosta's Recommendation finding that a genuine issue of material fact exists as to whether the inadequate application of the statutory veterans' preference qualifies as an adverse employment action. The Court has reviewed *de novo* those portions of Judge Acosta's Findings and Recommendation to which Defendants have objected, as well as Defendants' objections and underlying briefing. The Court agrees with Judge Acosta's reasoning and ADOPTS those portions of the Findings and Recommendation to which Defendants have objected.

For those portions of Judge Acosta's Findings and Recommendation to which neither party has objected, the Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

¹ Plaintiff additionally requests that the Court accept as substantive evidence the deposition excerpts Plaintiff attaches to his Objection. ECF 76 at 12. The Court adopts Judge Acosta's finding regarding the inadmissibility of the deposition excerpts at the Findings and Recommendation stage and declines to now accept the excerpts as substantive evidence.

CONCLUSION

The Court **ADOPTS** Judge Acosta's Findings and Recommendation, ECF 74.

Defendants' motion for summary judgment (ECF 49) is **GRANTED** and this case is dismissed.

Plaintiff's motion to strike Defendants' reply (ECF 69) is **DENIED** as moot.

IT IS SO ORDERED.

DATED this 1st day of July, 2016.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge